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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,415	01/22/2004	Dale A. Gepfrey	GII 001 P2 US	4545
7590	04/29/2008		EXAMINER	
Joseph G. Nauman 696 Renolda Woods Ct. Dayton, OH 45429-3415			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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MAILED
FROM DIRECTOR'S OFFICE

Joseph G. Nauman
696 Renolda Woods Court
Dayton, OH 45429-3415

APR 28 2008

TECHNOLOGY CENTER 3600

In re Application of:

Dale A, Gepfrey et al.
Application No. 10/762,415
Filed: January 22, 2004
For: WATER-TIGHT WINDOWS WITH
PREFORMED CORNERS

DECISION ON PETITION
UNDER 37 CFR § 1.181
TO WITHDRAW FINALITY

This is a decision on applicants' petition under 37 CFR 1.181 filed February 4, 2008 and March 20, 2008 requesting withdrawal of the finality of the Office Action mailed November 28, 2007

The petition is DISMISSED.

Applicant stated that the final rejection mailed November 28, 2007 is premature because the examiner has improperly restricted the claims. Applicant further stated the USPTO failed to acknowledge that the application was filed and clearly identified as a submission to enter the national stage under 35 USC 371.

A review of the record determined that applicant inquired on May 26, 2004, as part of his Response to File Missing Parts of Nonprovisional Application filed under 37 CFR 1.53(b), why his filing receipt did not indicate his priority claim since it was a National filing based on a published PCT application. In response, the USPTO on June 7, 2004 mailed applicant a Response to Request for Corrected Filing Receipt informing applicant that the applications to which applicant was claiming priority were filed more than one year prior to the filing date of this application and thus could not be claimed as priority documents.

The review further revealed that the examiner required a restriction under 35 USC 121 between method of making and product made and combination and subcombination product claims. Applicant provisionally elected the combination product claims, and a non-final action on the provisionally-elected claims was mailed April 27, 2006. In response to this non-final action, applicant timely traversed the restriction by arguing that restriction under 35 USC 121 was improper when examining a National Stage application. In response to this traversal, the primary examiner stated that the application was not considered a National Stage application filed under 35 USC 371, and thus the restriction was proper. The examiner made final the restriction and the office action on the provisionally-elected claims, noting that applicant filed the application claiming benefit of PCT/US02/23360 under the provisions of 35 USC 120 (as applicant identified the case on the Declaration filed on May 26, 2004).

Thus the issue to be decided is whether the pending Application is a National Stage Application of PCT/US02/23360 properly filed under 35 USC 371, and thus subject to the Unity Requirement, or whether it is a U.S. Non-Provisional Application filed under 37 CFR 1.53(b) and subject to Restriction Requirements under 35 USC 121.

This issue is decided by the PCT Legal Department, and is not decided by the Director of TC3600.

SUMMARY: For the above reasons, the petition is **DISMISSED**.

The application is being forwarded to the PCT Legal Department for full consideration of the filing status, and applicant will be apprised of their decision and reasoning in writing when a determination on the proper status of the application is made. No further action by applicant is required for this consideration.

As currently presented, the application was properly restricted under 35 USC 121, as the case was not afforded status under 35 USC 371. If the PCT Legal Department determines that the case should not be afforded status under 35 USC 371, then the restriction is proper and the finality is not premature and the petition will be denied. However, if the PCT Legal Department determines that the case should be afforded status as a filing under 35 USC 371, then the petition to withdraw finality based on the 371 status will be considered by the 3600 Technical Center Director and a decision will be mailed to applicant.

Telephone inquiries should be directed to Katherine W. Mitchell, Supervisory Patent Examiner, at (571) 272-7069.



Katherine A. Matecki, Director
Patent Technology Center 3600
(571) 272-5250

km/tpl: 4/21/08

